



NOV 8 1938

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 465

ROBERT B. HONEYMAN,

Appellant,

vs.

DAVID B. JACOBS AND MARY V. JACOBS.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

STATEMENT AS TO JURISDICTION.

ROBERT B. HONEYMAN,

DAVID R. J. ARNOLD,

Counsel for Appellant.



INDEX.

SUBJECT INDEX.

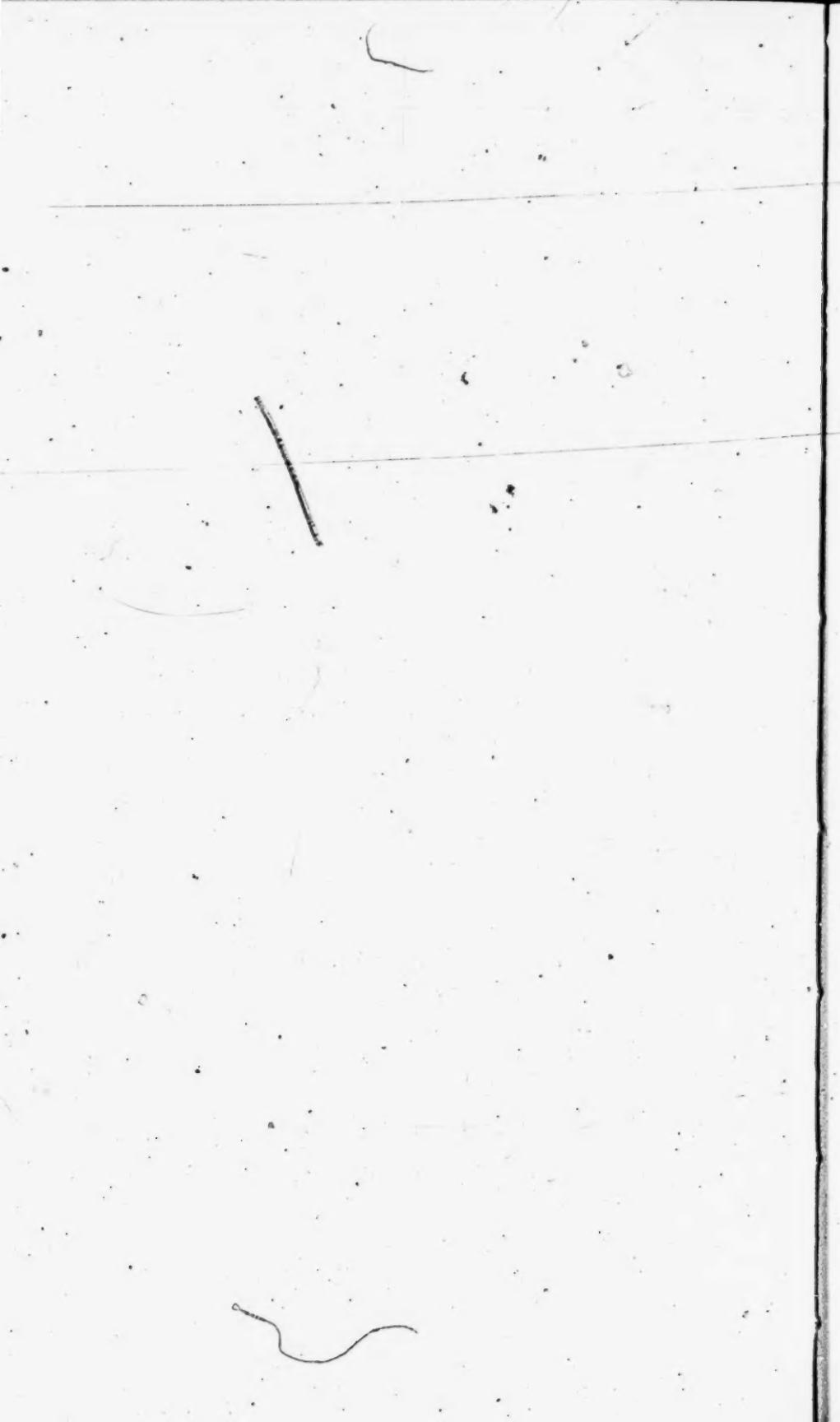
	Page
Statement as to jurisdiction	1
Statutory provisions sustaining jurisdiction	1
State statute the validity of which is involved	1
Date of the judgment sought to be reviewed and date of application for appeal	4
Nature of the case and rulings below	4

CASE CITED.

<i>Home Building Loan Association v. Blaisdell</i> , 290	
U. S. 398	6

STATUTES CITED.

Judicial Code, Section 237(28 U. S. C. 344)	1
Laws of New York of 1933, Chapter 794, as amended (Laws of 1934, Chapter 277; Laws of 1935, Chapter 2; Laws of 1936, Chapter 87; Laws of 1937, Chapter 83; Laws of 1938, Chapter 501)	1



SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1938

No. 465

ROBERT B. HONEYMAN,

vs.

Appellant,

ALMA CLAIRE CLARK, INDIVIDUALLY AND AS EXECUTRIX
UNDER THE LAST WILL AND TESTAMENT OF ANNIE E. POTB,
DECEASED, AND OTHERS, *Defendants*, AND DAVID B.
JACOBS AND MARY V. JACOBS, HIS WIFE,

Appellees.

STATEMENT AS TO JURISDICTION.

The appellant contends that the Supreme Court of the United States has jurisdiction upon an appeal to review the judgment of the Supreme Court of the State of New York in question.

This appeal comes directly within the provision of Section 237 of the Federal Judicial Code (28 U. S. C. #344). It is a final judgment or order of the highest court of the State of New York in which a decision in the suit could be had. There is drawn in question the validity of a statute of the State of New York and the decision of the Court of Appeals of the State of New York is in favor of its validity.

The New York Statute, Chapter 794 of the Laws of 1933, reads as follows:

“AN ACT to amend the civil practice act, in relation to deficiency judgments in actions to foreclose mort-

gages on real property and actions to recover judgments on bonds secured by mortgages on real property.

“Became a law August 28, 1933, with the approval of the Governor Passed, on message of necessity, three-fifths being present.

“The People of the State of New York, represented in Senate and Assembly, do enact as follows:

“**SECTION 1.** It is hereby declared that a serious public emergency affecting and threatening the welfare, comfort and safety of the people of the state and resulting from the abnormal disruption in economic and financial processes, the abnormal credit and currency situation in the State and nation, and the abnormal deflation of real property values and the curtailment of incomes by unemployment and other adverse conditions, exists. Therefore, in the public interest, the necessity for legislative intervention by the enactment of the provisions hereinafter prescribed, and their application until July first, nineteen hundred thirty-four, is hereby declared as a matter of legislative determination.

“**§ 2.** The civil practice act is hereby amended by inserting therein two new sections ten hundred and eighty-three-a and ten hundred and eighty-three-b, as follows:

“**1083-a. LIMITATION UPON DEFICIENCY JUDGMENTS DURING EMERGENCY PERIOD.**—No judgment shall be granted for any residue of the debt remaining unsatisfied as prescribed by the preceding section where the mortgaged property shall be sold during the emergency, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such

notice shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct, the fair and reasonable market value of the mortgaged premises as of the date of sale or such nearest earlier date as there shall have been any market value thereof and shall make an order directing the entry of a deficiency judgment. Such deficiency judgment shall be for an amount equal to the sum of the amount owing by the party liable as determined by the judgment with interest, plus the amount owing on all prior liens and encumbrances with interest, plus cost and disbursements of the action including the referee's fee and disbursements, less the market value as determined by the court or the sale price of the property whichever shall be the higher. If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist.

“§ 1083-b. JUDGMENTS IN ACTIONS ON BONDS.—In any action pending at the time this section as hereby added takes effect, or hereafter commenced during the emergency, other than an action to foreclose a mortgage, to recover a judgment for any indebtedness secured solely by a mortgage on real property and which originated simultaneously with such mortgage and which is secured by such mortgage, against any person or corporation directly or indirectly or contingently liable therefor, any party against whom a money judgment is demanded, shall be entitled to set off the fair and reasonable market value of the mortgaged property less the amounts owing on prior liens and encumbrances. In any action to foreclose the mortgage commenced after the emergency as defined by the law shall have expired, a deficiency judgment may be recovered as though this section had not been enacted but the amount of any money judgment recovered as provided

in this section shall be deducted in computing such deficiency judgment.

"3. If any section, part or provision of this act shall be declared unconstitutional or invalid or ineffective by any court of competent jurisdiction, such declaration shall be limited to the section, part or provision directly involved in the controversy in which such declaration was made and shall not affect any other section, provision or part hereof.

"4. The period of the emergency hereby declared shall be from the date this act takes effect until July first, nineteen hundred thirty-four. This act shall not apply to mortgages dated on or after July first, nineteen hundred thirty-two, or to any bond, collateral bond, guarantee, or extension agreement or other agreement or writing concerning or delivered in connection with any indebtedness secured by a mortgage dated on or after July first, nineteen hundred thirty-two.

"5. This Act shall take effect immediately."

By amendment, the period of emergency has been extended to July 1, 1939 (Laws of 1934, Chapter 277; Laws of 1935, Chapter 2; Laws of 1936, Chapter 87; Laws of 1937, Chapter 83; Laws of 1938, Chapter 501).

The judgment sought to be reviewed is that of the Court of Appeals of the State of New York, bearing date October 26, 1938, affirming the judgment of the Special Term, Queens County, dated September 7, 1938. The application for an appeal was presented to the Presiding Judge of the Court of Appeals of the State of New York on October 29, 1938.

The Court of Appeals in its opinion sets forth very succinctly all the facts and the question involved, and its determination. The court say:

"The plaintiff has brought an action for the foreclosure of a mortgage upon real property in Queens County, executed and delivered by the defendants, David B. Jacobs and Mary V. Jacobs, on the 4th day

of February, 1928, to secure the payment of their bond in the sum of \$15,000. The plaintiff asks for a judgment of foreclosure and sale of the mortgaged premises and for judgment for any deficiency which may arise upon such sale. Judgment of foreclosure and sale was entered in April, 1938, and the mortgaged premises were sold in May, 1938, to the plaintiff for the sum of \$7,500. The referee reported that after payment of taxes and expenses 'there is due to the plaintiff a deficiency of \$9,500.21, with interest from the date of this report.' Under the statute as it existed at the time the bond and mortgage were executed, the plaintiff would have been entitled to a judgment for that deficiency.

"Sections 1083 a and b of the C. P. A. enacted thereafter purport to limit the right of the plaintiff to enter a deficiency judgment. The plaintiff, alleging 'that such legislative acts constitute an unreasonable interference of the plaintiff's contract rights with the defendants, David B. Jacobs and Mary V. Jacobs, and are wholly unconstitutional and in violation of Article 1, Section 10 of the Constitution of the United States,' has applied to the Court for an order confirming the referee's report of sale and directing the clerk to enter in his favor judgment against the said defendants in the sum of \$9,500. The plaintiff appeals to this court from an order of Special Term which provides that the application for a deficiency judgment 'is in all respects denied on the grounds that the value of the property is equal to the debt of the plaintiff, and pursuant to Section 1083-a of the Civil Practice Act of the State of New York, limiting deficiency judgment, the plaintiff is deemed paid as a matter of law, which section is hereby held to be constitutional.' The appeal is taken direct to this court pursuant to the provisions of Section 588, subdivision 3, C. C. P. A., and the only question which may be considered on this appeal is the validity of Section 1083-a under the Constitution of the United States. We have, in other cases, sustained its validity. (*Honeyman v. Hanan*, 275 N. Y. 382; *Klinke v. Samuels*,

264 N. Y. 144; *City Bank Farmers Trust Co. v. Ardlea Corp.*, 267 N. Y. 224.)

"Order affirmed without costs."

The question of the constitutionality of Chapter 794 of the Laws of 1933 of the State of New York, which enacted Section 1083-a of the Civil Practice Act, was presented to the Special Term as well as to the Court of Appeals, by arguments and written briefs. As a result of the determination, appellant is without any remedy or means of establishing or collecting his claim against appellees for the balance due him upon his undisputed claim for moneys loaned. The question presented is a substantial one and involves the right of the New York Legislature to destroy appellant's contract rights without any adequate reason and without compensation therefor.

The Supreme Court of the United States has jurisdiction to review the decision appealed from. In *Home Building Loan Association v. Blaisdell*, 290 U. S. 398, this jurisdiction was exercised under similar circumstances.

DAVID R. J. ARNOLD,
Attorney for Appellant.

